

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WEIRTON HEALTH PARTNERS, LLC.

C.A. No.: 5:09-CV-40

Plaintiff,

The Honorable Frederick P. Stamp, Jr.

v.

GABRIELLE YATES,

Defendant.

ANSWER TO COUNTERCLAIM

AND NOW, comes the Counterclaim Defendant, Weirton Heath Partners, LLC, ("WHP") by its attorneys Avrum Levicoff, Esquire, Denise Abbott, Esquire, and Levicoff, Silko & Deemer, and answers the Counterclaim asserted in Defendant Gabrielle Yates' Answer and Counterclaim as follows:

First Defense

Yates' conduct in contacting the family member of a female resident and any other conduct alleged in her Counterclaim is not protected activity.

Second Defense

Yates' claims are barred, in whole or in part, by Yates' failure to mitigate her alleged damages.

Third Defense

Yates' allegations do not state a claim for punitive damages.

Fourth Defense

Should Yates prevail, she is not entitled to punitive damages because Weirton Health Partners made good faith efforts to comply with the law and did not act with malice or reckless indifference to Yates' rights.

Response to Averments in the Counterclaim

Weirton Health Partners, LLC admits the averments set forth in paragraphs 2, 3, 4 and 9 of the Counterclaim.

WHP admits in part and denies in part the averments set forth in paragraph 8 of the Counterclaim. WHP admits that Yates contacted a female resident's family but denies that she made such contact out of concern for the health and safety of the resident or that the sexual relationship she reported existed.

WHP denies the averments set forth in paragraphs 5, 6, 7, 10, 11, 15, 16, 17 and those averments contained in the Wherefore paragraph following paragraph No. 17.

With respect to the averments set forth in paragraph 5, 6 and 7, WHP denies that Yates discovered or had any personal knowledge of a sexual relationship between a male and female resident and denies that Yates discussed any relationship between the male and female residents with any supervisor or that any supervisor instructed her to ignore a sexual relationship.

WHP denies that its motivation in discharging Yates was in contravention of any public policy, including those set forth in paragraph 10 or that Yates was in fact discharged in contravention of public policy as she avers in paragraph 11. Yates was discharged for improperly contacting a resident's family member directly and reporting information that was false and/or of which she had no first-hand knowledge.

WHP denies that Yates is entitled any of the relief she seeks in paragraph 11, 16, 17 or the Wherefore paragraph following paragraph No. 17.

Paragraphs 1 and 14 are paragraphs of incorporation and therefore in response, WHP incorporates by reference its responses to the foregoing paragraphs.

WHEREFORE, WHP demands judgment in its behalf with respect to Yates' Counterclaim.

A JURY TRIAL IS DEMANDED.

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2010, I electronically filed the foregoing Answer to Counterclaim with the Clerk Of Court using the CM/ECF System which will send notification of such filing to the following CM/ECF participants:

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